

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TERRENCE GARRETT,

Plaintiff,

CIVIL ACTION NO. 09-13141

vs.

DISTRICT JUDGE AVERN COHN

STATE TROOPER ADAMS, et.al.,

MAGISTRATE JUDGE DONALD A. SCHEER

Defendants.

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MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

RECOMMENDATION: Plaintiff's Motion for a Default Judgment should be DENIED, as all the Defendants filed a timely response to the Amended Complaint.

* * *

This cause comes before the Court on Plaintiff's Motion for a Default Judgment (Docket #48). Defendants filed separate responses opposing the motion (Docket #49-#50, #57-#58). Since Defendants filed timely responses to the summons and Amended Complaint, Plaintiff is not entitled to default judgment.

Even though Plaintiff was given *in forma pauperis* status on September 8, 2009, service of process could not be commenced until Plaintiff provided the court with complete addresses for each defendant he wished to sue (Docket #5). Plaintiff provided these addresses to the Court on October 09, 2009 (Docket #15).

Plaintiff then filed numerous proposed amendments to his claims. Given the number of proposed amendments, Plaintiff was ORDERED to file an Amended Complaint on November 2, 2009. Plaintiff was again requested to provide the Court with the names and updated addresses of each defendant named in the Amended Complaint, so that service by the United States Marshal may be effected (Docket #19). Plaintiff filed an Amended Complaint

on November 13, 2009, providing the names and addresses of each defendant he wished to sue (Docket #21).

The summons and Amended Complaint were served by the United States Marshal upon all the Defendants on March 17, 2010, (Docket #25-#39). According to Federal Rule of Civil Procedure 12(a)(1)(A)(i), defendants had to file an answer within 21 days after being served with the summons and complaint. However, Federal Rule of Civil Procedure 12(a)(1)(A)(ii) allows a defendant 60 days to file an answer, provided that waiver of service was timely under Rule 4(d), and the request for waiver had been sent.

All the defendants in the instant case were served with a Request for Waiver of Service of Summons in March 2010. Each of the defendants timely returned the waiver of service of summons by April 7, 2010. By reason of the timely filed waivers of service of summons, the deadline for the defendants to respond the complaint was 60 days from April 7, 2010. Every defendant timely answered the Amended Complaint, and duly served Plaintiff on May 17, 2010 (Docket #41, #43-45). Since each Defendant filed a timely response to Plaintiff's summons and Amended Complaint, the Motion for Default Judgment should be DENIED.

The parties are advised that any objections to this Report and Recommendation must be filed with the Court within fourteen (14) days after they are served with a copy, or further appeal from Judge Cohn's acceptance thereof is waived.

DATED: September 9, 2010

s/Donald A. Scheer
DONALD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I hereby certify on September 9, 2010 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on September 9, 2010: **Terrence Garrett**.

s/Michael E. Lang
Deputy Clerk to
Magistrate Judge Donald A. Scheer
(313) 234-5217